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February 12, 2016

BY ECF

The Honorable Denise L. Cote
United States District Court for the
Southern District of New York
Daniel Patrick Moynihan U.S. Courthouse
500 Pearl Street
New York, New York 10007

RE: NCUA v. UBS Securities LLC, No. 13-cv-6731 (DLC) (S.D.N.Y.)

Dear Judge Cote:

On behalf of UBS Securities LLC (“UBS”), we write to request that the Court order that the parties complete briefing on Defendants’ Motion for Partial Summary Judgment on the Proper Calculation of Prejudgment Interest (the “PJI Motion”) by no later than February 19, 2016.

Following the parties’ February 11, 2016, teleconference with the Court, UBS made an offer of judgment pursuant to Federal Rule of Civil Procedure 68, a copy of which is attached hereto. UBS’s offer of judgment provided that NCUA shall recover \$33,014,285, the maximum judgment Plaintiff is entitled to in this Action, “plus prejudgment interest calculated at the appropriate rate and methodology as determined by the Court.” In all other respects, the terms of the offer of judgment are identical to those offered by RBS and accepted by NCUA, with the exception of textual edits to reflect the relevant dates, parties and actions that are referred to therein.

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At the Court's direction, UBS also proposed an expedited briefing schedule for the PJI Motion. Specifically, UBS proposed that NCUA's opposition brief (the "Opposition") be due on Wednesday, February 17, 2016, and Defendants' reply be due within 48 hours. During the parties' meet-and-confer earlier today, NCUA proposed that its Opposition be due on February 26, 2016, which is only one week earlier than the deadline that NCUA has proposed for other summary judgment opposition briefs.¹

UBS respectfully requests that the Court order UBS's proposed expedited schedule because the PJI Motion involves only two narrow legal issues: (1) whether prejudgment interest should be calculated on the declining principal balance of the RMBS certificates, as this Court held in *Nomura*, or on the full purchase price; and (ii) the applicable prejudgment interest rate for claims under the Texas Securities Act.²

In light of UBS's offer of judgment, UBS believes that expedited briefing and early resolution of the PJI Motion will result in a swift resolution of this action in a manner that conserves the resources of the Court and the parties while providing the credit unions on whose behalf NCUA has brought this action the maximum recovery to which they are entitled.

For the foregoing reasons, UBS respectfully requests that the Court order that NCUA's opposition to the PJI Motion be submitted by February 17, 2016, and Defendants' Reply, if any, within 48 hours of the Opposition.³

Respectfully,

/s/ Robert A. Fumerton

Robert A. Fumerton

Enclosure

cc: All Counsel of Record (via ECF)

¹ During the meet-and-confer, NCUA indicated that it would withdraw the portion of its Motion for Summary Judgment Regarding Damages to the extent that it addressed the calculation of prejudgment interest, and brief the prejudgment interest issue in connection with Defendants' PJI Motion.

² The parties do not dispute that the coupon rate is the applicable prejudgment interest rate for claims under the Illinois Securities Law.

³ Credit Suisse takes no position on the expedited briefing schedule for the PJI Motion, but has agreed to brief the motion on whatever coordinated schedule is so ordered by the Court.

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

NATIONAL CREDIT UNION
ADMINISTRATION BOARD, as Liquidating
Agent of Southwest Corporate Federal Credit Union
and Members United Corporate Federal Credit
Union,

Plaintiff,

v.

UBS SECURITIES LLC,

Defendant.

Case No. 13-CV-6731 (DLC)

DEFENDANT UBS SECURITIES LLC'S OFFER OF JUDGMENT

Pursuant to Federal Rule of Civil Procedure 68, Defendant UBS Securities LLC ("Defendant") hereby offers to allow judgment to be taken against it in favor of Plaintiff National Credit Union Administration Board as liquidating agent for Southwest Corporate Federal Credit Union and Members United Corporate Federal Credit Union ("Plaintiff") in the action captioned *Nat'l Credit Union Admin. Bd. v. UBS Securities LLC*, No. 13-cv-6731-DLC (S.D.N.Y.) (the "Action") on the terms set forth below. This offer of judgment is made for purposes of Rule 68 only and shall not constitute or otherwise be construed as an admission of liability in any respect.

1. Plaintiff shall recover \$33,014,285 from Defendant, plus prejudgment interest calculated at the appropriate rate and methodology as determined by the Court. In addition, Defendant shall pay any and all reasonable costs and attorneys' fees allowable under law in connection with Plaintiff's prosecution of the Action. If Plaintiff and Defendant are unable to

reach agreement on this amount, Defendant agrees to have the amount of reasonable attorneys' fees and costs determined by the Court.

2. Any judgment entered pursuant to this offer shall fully and completely terminate the Action with prejudice and shall have claim preclusive effects as between Plaintiff and Defendant. For the avoidance of any doubt, any judgment entered pursuant to this offer shall satisfy, settle, resolve, and eliminate any cause of action or claim by Plaintiff against, implicating, or involving Defendant arising out of the transactions, occurrences, and operative facts relating to the Action, whether or not such causes of action or claims are asserted, known, or suspected by Plaintiff, but any judgment entered pursuant to this offer shall have no claim or issue preclusive effect in, or otherwise settle or terminate, any other actions brought by Plaintiff against other defendants or brought by NCUA in its capacity as liquidating agent of other credit unions, including but not limited to, U.S. Central Federal Credit Union and Western Corporate Federal Credit Union.

3. This offer of judgment and any judgment entered pursuant to it shall not constitute or otherwise be construed as an admission by Defendant of any allegations, assertions or averments contained in any complaint, motion, letter or other paper submitted or filed by Plaintiff.

4. This offer of judgment and any judgment entered pursuant to it shall not constitute or otherwise be construed as an admission of liability in any respect, including but not limited to Defendant's liability to the Plaintiff.

5. This offer of judgment and any judgment entered pursuant to it shall not constitute or otherwise be construed as an admission of the insufficiency of any defense, affirmative or otherwise, Defendant has or could have asserted.

6. This offer of judgment and any judgment entered pursuant to it shall not have any collateral estoppel or issue preclusive effects in any other judicial, regulatory, administrative, or other proceeding, including but not limited to the matter captioned *Nat'l Credit Union Admin. Bd. v. UBS Securities LLC, et al.*, No. 12-cv-2591-JWL (D. Kan.).

7. In the event this offer is not accepted and judgment is not entered pursuant to its terms, Defendant retains, reserves, and preserves any and all rights to contest liability and damages in any further proceedings.

8. Pursuant to Federal Rule of Civil Procedure 68, this offer of judgment is made at least fourteen days before the date set for trial. This offer shall be deemed withdrawn unless written notice of acceptance is received within fourteen days of service.

Dated: February 11, 2016

/s/ Robert A. Fumerton
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